

2021 Special 301 Report

Office of the United States Trade Representative

SECTION II: Country Reports

PRIORITY WATCH LIST

ARGENTINA

Argentina remains on the Priority Watch List in 2021.

Ongoing Challenges and Concerns

Argentina continues to present long-standing and well-known challenges to intellectual property (IP)-intensive industries, including those from the United States. A key deficiency in the legal framework for patents is the unduly broad limitations on patent-eligible subject matter, including patent examination guidelines that automatically reject patent applications for categories of pharmaceutical inventions that are eligible for patentability in other jurisdictions and requirements that processes for the manufacture of active compounds disclosed in a specification be reproducible and applicable on an industrial scale. Stakeholders remain concerned about the limits on patentability for biotechnological innovations based on living matter and natural substances in Resolution 283/2015, which differ from the standard in many other countries. Another ongoing challenge to the innovative agricultural chemical and pharmaceutical sectors is inadequate protection against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for products in those sectors. Finally, although Argentina, through Resolution 56/2016, has allowed for a partial reduction of its patent backlog through reliance on favorable decisions from counterpart foreign patent applications, Argentina continues to struggle with a substantial backlog of patent applications for biotechnological and pharmaceutical inventions resulting in long delays for innovators in these fields seeking patent protection in the market. Government-wide hiring restrictions that remain in place, going back to a hiring freeze in 2018, have resulted in a limited number of patent examiners. However, new online-processing procedures implemented by the National Institute of Industrial Property (INPI) have allowed for increased numbers of filings and, according to industry, have improved efficiency in the processing of patents and trademarks in 2020. As for INPI's participation in the Patent Prosecution Highway with the U.S. Patent and Trademark Office, the project expired in March 2020.

Enforcement of IP rights in Argentina continues to be a challenge, and stakeholders report widespread unfair competition from sellers of counterfeit and pirated goods and services. Although the physical market of La Salada in Buenos Aires was closed during much of 2020, many of its activities involving the sale of counterfeit goods moved online through social media applications. Counterfeit sales in other physical locations also increased, with surges

in the selling of counterfeit goods occurring in small markets, through illegal street vendors, and in activity in the Avellaneda Street market in Buenos Aires. In addition, Argentine police generally do not take *ex officio* actions, prosecutions can stall and languish in excessive formalities, and, when a criminal case does reach final judgment, infringers rarely receive deterrent sentences. Hard goods counterfeiting and optical disc piracy are widespread, and online piracy continues to grow due to nearly non-existent criminal enforcement against such piracy. As a result, IP enforcement online in Argentina consists mainly of right holders trying to convince Argentine Internet service providers to agree to take down specific infringing works, as well as attempting to seek injunctions in civil cases, both of which can be time-consuming and ineffective. Right holders also cite widespread use of unlicensed software by Argentine private enterprises and the government.

Developments, Including Progress and Actions Taken

Argentina made limited progress in IP protection and enforcement in 2020. INPI began accepting the electronic filing of patent, trademark, and industrial design applications in 2018 and completed its transition to an all-electronic filing system in 2020. Argentina continued to improve procedures for trademarks and saw record high trademark filings in 2020, with INPI reducing the time for trademark registrations and implementing a fast track for trademark renewals. The United States welcomes and continues to monitor these enhancements. To further improve patent protection in Argentina, including for small and medium-sized enterprises, the United States urges Argentina to ratify the Patent Cooperation Treaty. The United States urges Argentina to ensure transparency and procedural fairness in the protection of geographical indications (GIs) and to ensure that the grant of GI protection does not deprive interested parties of the ability to use common names, particularly as Argentina proceeds with the European Union-Mercosur Trade agreement.

Argentina's efforts to combat counterfeiting continue, but without systemic measures, illegal activity persists. As noted, reports show a resurgence of markets selling counterfeit and pirated goods. The United States encourages Argentina to create a national IP enforcement strategy to enhance interagency coordination in enforcement efforts and move to having a sustainable, long-lasting impact on IP infringements. The United States also encourages legislative proposals to this effect, along the lines of prior bills introduced in Congress to provide for landlord liability and stronger enforcement on the sale of infringing goods at outdoor marketplaces such as La Salada, and to amend the trademark law to increase criminal penalties for counterfeiting carried out by criminal networks. In 2017, Argentina formally created the Federal Committee to Fight Against Contraband, Falsification of Trademarks, and Designations, formalizing the work on trademark counterfeiting under the National Anti-Piracy Initiative. The Committee did not meet during 2020, but the United States encourages Argentina to continue this initiative and expand it to include online piracy. Revisions to the criminal code that had been submitted to Congress, including certain criminal sanctions for circumventing technological protection measures, have stalled. The creation of a federal specialized IP prosecutor's office and a well-trained enforcement unit could potentially help combat online piracy as well as prevent lengthy legal cases with contradictory rulings. In November 2020, Argentina and the United States held a bilateral meeting under the Innovation and Creativity Forum for Economic Development, part of the United States-Argentina Trade and Investment Framework Agreement, to continue discussions and collaboration on IP topics of mutual interest. The United States intends to monitor all the outstanding issues for progress and urges Argentina to continue its efforts to create a more attractive environment for investment and innovation.